

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ADOLFO MARTINEZ and MARIA  
LUZ LOPEZ MARTINEZ, husband and  
wife;

Plaintiff,

v.

CITYOF UNION GAP, a municipal  
corporation; and JOHN DOES NO. 1-  
15;

Defendants.

NO: CV-13-3040- RMP  
CV-13-3042-RMP

JURY TRIAL SCHEDULING  
ORDER

A telephonic scheduling conference was held in this matter on July 1, 2013.

J. Jarrette Sandlin appeared on behalf of Plaintiffs Adolfo and Maria Martinez, and  
Kirk A. Ehliis appeared on behalf of Defendants City of Union Gap, et al.

The Court reviewed the parties' Joint Status Certificate, ECF No. 7, heard  
from counsel, and is fully informed. Accordingly, **IT IS HEREBY ORDERED:**

1       1. The parties' oral motion to consolidate CV-13-3040-RMP and CV-13-  
2       3042-RMP is **GRANTED**. Both cases shall be consolidated under **CV-**  
3       **13-3040**.

4       2. On or before **August 15, 2013**, Plaintiff shall identify all John Doe  
5       defendants via an amended complaint. If Plaintiff fails to amend the  
6       complaint by that date, all claims will be dismissed as to John Doe  
7       defendants.

8       **3. Motion Practice**

9       (a) All parties shall adhere to LR 7.1.

10       (b) Motions to Expedite, if any, shall be filed separately and noted for  
11       hearing at least seven (7) days from the date of filing, pursuant to LR  
12       7.1(h)(2)(C). If the matter needs to be heard on a more immediate basis, the  
13       party filing the motion shall advise chambers of such.

14       (c) All non-dispositive hearings in which oral argument is requested  
15       shall be conducted telephonically or by video conference unless approved  
16       for in-person argument by the Court. **The parties shall not utilize cell**  
17       **phones or speaker phones during any telephonic hearing.**

18       (d) If an in-person argument is desired, the parties must advise the Court  
19       why in-person argument would be appropriate when contacting the Court to  
20       schedule the hearing. All dispositive hearings in which oral argument has

1 been requested shall be set for in-person appearance; however, the parties  
2 may request to appear telephonically or by video conference. Not  
3 withstanding the foregoing procedure, the Court may decide that oral  
4 argument is not warranted and proceed to determine any motion without oral  
5 argument.

6 **4. *Initial Disclosures***

7 Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, the  
8 parties shall disclose the following:

9 (a) list of all individuals, including addresses and phone numbers, if  
10 known, who are likely to have discoverable information relevant to any issue  
11 in the case;

12 (b) A copy or description of all documents and tangible things that may  
13 be relevant to any issue in the case;

14 (c) A computation of any damages claimed by any party; and

15 (d) A description of any insurance agreement that must be made  
16 available for inspection and/or copying.

17 **5. *Expert Disclosures***

18 The parties shall exchange the materials identified in Fed. R. Civ. P.  
19 26(a)(2)(B) in accordance with the following schedule, but shall not file these  
20 materials with the Court.

1 (a) The parties shall identify expert witnesses to be called at trial and  
2 shall exchange Rule 26 materials, including expert witness reports, for those  
3 witnesses on or before **March 13, 2014**, for all issues on which they bear the  
4 burden of proof. Ordinarily, that means that Plaintiffs shall disclose experts  
5 supporting its case-in-chief, and that Defendants shall disclose experts  
6 supporting any affirmative defenses.

7 (b) The parties shall identify expert witnesses to be called at trial and  
8 shall exchange Rule 26 materials, including expert witness reports, for those  
9 witnesses on or before **April 11, 2014**, for all issues on which the opposing  
10 party bears the burden of proof. Ordinarily, that means that Defendants shall  
11 disclose experts opposing Plaintiff's case-in-chief, and that Plaintiffs shall  
12 disclose experts opposing any affirmative defenses.

13 (c) All rebuttal expert witnesses shall be identified and Rule 26 materials  
14 exchanged on or before **May 2, 2014**.

15 (d) The parties may modify the deadline for exchange of expert  
16 disclosures by joint stipulation filed with the Court; a motion is not required.

17 (e) Pretrial disclosure of the identity of all other persons shall conform to  
18 the requirements of Fed. R. Civ. P. 26(a)(1) (persons with relevant  
19 knowledge) and 26(a)(3) (witnesses).  
20

1       **6. *Discovery***

2           (a) All discovery shall be completed on or before **May 30, 2014**.

3           (b) The parties shall file no discovery except as necessary to support  
4       motions.

5       **7. *Dispositive Motions***

6           (a) All dispositive motions shall be filed and served on or before **June**  
7       **20, 2014**.

8           (b) As with all motions filed in this case, dispositive motions shall  
9       comply with the page and time limits set forth in Local Rule 7.1(h).

10          (c) Challenges to the admissibility of expert opinion testimony on the  
11       basis of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113  
12       S.Ct. 2786, 2796, 125 L.Ed.2d 469 (1993), shall be made by written motion  
13       and filed by **June 20, 2014**. If the party challenging expert testimony  
14       anticipates that an evidentiary hearing shall be required, the party shall so  
15       advise the Court and opposing counsel in conjunction with the filing of its  
16       *Daubert* motions. The party shall describe the nature of the evidence to be  
17       presented and provide an estimate of the amount of time required for the  
18       hearing.

1       **8. Settlement Status**

2           (a) By **July 18, 2014**, the parties shall file a Settlement Status Certificate  
3       stating whether they would be in agreement to schedule mediation with one  
4       of the court's full-time magistrates.

5           (b) If the parties fail to file a Settlement Certificate by the date given, the  
6       parties shall appear before the Court for a telephonic status conference on  
7       **July 25, 2014, at 9:30 a.m.** to discuss the prospect of a settlement  
8       conference. This hearing shall take place **ONLY** if the parties fail to file the  
9       Settlement Certificate, in which case the parties shall call the Court's toll-  
10      free conference line at **(888) 363-4749**. The caller will be prompted to enter  
11      the following: **Access Code 6699898** and **Security Code: 3040**. **Please**  
12      **listen carefully and follow the automated instructions so that you can be**  
13      **added to the conference in a timely manner.**

14      **9. Exhibit and Witness Lists**

15           (a) Exhibit lists and witness lists shall be filed and served and exhibits  
16      made available for inspection (or copies provided), on or before **September**  
17      **18, 2014.**

18           (b) The witness list shall include identification of each witness's  
19      testimony.  
20

1 (c) Where feasible, all exhibits identified in depositions shall be pre-  
2 marked with the exhibit numbers that will be used at trial. Plaintiff's trial  
3 exhibits are to be numbered 1 through 199; defendant's exhibits 200 and  
4 following.

5 (d) Objections to such lists and any accompanying briefs shall be filed  
6 and served on or before **September 25, 2014**.

7 (e) Responses, if any, to objections to witness and/or exhibit list shall be  
8 filed and served on or before **October 2, 2014**.

9 (f) Objections shall be heard at the pretrial conference. Copies of the  
10 exhibits to which there are objections shall be provided to the Court on or  
11 before **September 25, 2014**.

12 (g) In accordance with Local Rule 83.1(g), each party shall bring to trial,  
13 and any other hearing on the merits, photocopies of their relevant pre-  
14 marked exhibits for the Court, opposing counsel, and testifying witness,  
15 unless it is not possible to do so because of the nature of an exhibit. It is  
16 recommended that these photocopies be organized into separate binders.

17 **10. *Designation of Testimony***

18 (a) Designation of substantive, as opposed to impeachment, deposition  
19 testimony shall be by highlighting and shall be served upon opposing  
20 counsel, **but not filed**, on or before **September 18, 2014**.

1 (b) Cross-designations by highlighting in a different color shall be  
2 served, **but not filed**, on or before **September 25, 2014**.

3 (c) Objections to any designated deposition testimony shall be **filed and**  
4 **served** on or before **October 2, 2014**, and shall be heard and resolved at the  
5 pretrial conference.

6 (d) Copies of designations to which there are objections shall be  
7 provided to the Court on or before **October 2, 2014**.

8 **11. *Motions in limine***

9 (a) All unresolved substantive or evidentiary issues that may foreseeably  
10 arise during trial shall be addressed by motions in limine to be filed and  
11 served on or before **October 3, 2014**.

12 (b) Responses shall be filed and served on or before **October 10, 2014**.

13 (c) Replies shall be filed and served on or before **October 17, 2014**.

14 (d) Motions in limine shall be noted for hearing at the pretrial  
15 conference.

16 **12. *Pretrial Order***

17 (a) A **joint** Pretrial Order, prepared in accordance with the format  
18 provided in Local Rule 16.1(b) shall be filed on or before **October 23, 2014**,  
19 and a copy e-mailed in Word format to the Court at  
20



1 [peterasonorders@waed.uscourts.gov](mailto:peterasonorders@waed.uscourts.gov). The Court will *not* accept  
2 **individually filed pretrial orders.**

3 (b) The list of exhibits contained in the joint Pretrial Order shall reflect  
4 the exhibit marking scheme described above in paragraph 9(c).

5 (c) In preparing the joint Pretrial Order, the parties shall confer  
6 regarding duplicate exhibits and determine which party will submit such  
7 exhibits for trial.

### 8 **13. *Jury Instructions***

9 (a) Prior to **October 23, 2014**, the parties shall confer regarding jury  
10 instructions in preparation of filing a joint set.

11 (b) No later than **October 23, 2014**, the parties shall **jointly** file **one**  
12 **complete set** of jury instructions that contain a copy of each instruction on  
13 which the parties agree and a copy of each instruction that is disputed (i.e., a  
14 copy of each party's proposed version, if any, of an instruction on which  
15 they do not agree). All instructions shall be short, concise, understandable,  
16 and neutral statements of the law. Argumentative instructions shall not be  
17 submitted or given. To be complete, the **joint** set of instructions must  
18 include instructions addressing the elements of each claim or defense, and a  
19 proposed verdict form. Instructions need not be submitted on issues that are  
20

1 not unique to this case, such as standard opening and closing instructions.

2 *See also* Local Rule 51.1.

3 (c) No later than **October 23, 2014**, each party shall file and serve a  
4 legal memorandum addressing any objections the party has regarding any  
5 instructions proposed by any other party. In their memoranda, the parties  
6 shall identify the specific portion of any proposed instruction to which they  
7 object and shall concisely state the basis for the objection. If any of the  
8 proposed instructions are modified versions of model instructions, the  
9 parties shall identify the modification and legal authority for the  
10 modification. Objections asserting that an instruction sets forth an incorrect  
11 or inappropriate statement of law shall cite specific legal authority  
12 supporting the objection. Failure to file an objection and supporting  
13 memorandum may be construed as consent to the adoption of an instruction  
14 proposed by another party. Any objection or proposed instruction for which  
15 a good faith basis does not exist may result in sanctions. The party  
16 proposing a disputed instruction may file a memorandum responding to any  
17 other party's objections, but must do so on or before **October 23, 2014**.

18 **14. Court Dates**

19 (a) An in-person pretrial conference will be held on **November 4, 2014**,  
20 at **9:30 a.m.** in **Yakima**, Washington.

1 (b) The **jury** trial shall commence on **November 17, 2014**, at **9:00 a.m.**  
2 in **Yakima**, Washington. Counsel estimates a trial length of **five (5) days.**  
3 **15.** Pursuant to Rule 16 of the Federal Rules of Civil Procedure, this  
4 schedule “shall not be modified except upon a showing of good cause and by leave  
5 [of the Court].” Rule 16(f) of the Federal Rules of Civil Procedure provides for  
6 sanctions for failure to obey the Scheduling Order.

7 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
8 this Order, consolidate CV-13-3042-RMP with CV-13-3040-RMP and provide  
9 copies of this Order to counsel.

10 **DATED** this 1st day of July 2013.

11  
12 *s/ Rosanna Malouf Peterson*  
13 ROSANNA MALOUF PETERSON  
14 Chief United States District Court Judge  
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